BORA LASKIN LAW LIBRARY
3 1761 10084223 6

FAMILY LAW

SUPPLEMENTARY MATERIALS

PROFESSOR R.J. COOMBE

FALL 1989

VOLUME I

FACULTY OF LAW

UNIVERSITY OF TORONTO

Prepared with the assistance of
Shauna Van Praagh

LAW LIBRARY

SEP 6 1989

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

FAMILY LAW

SUPPLEMENTARY MATERIALS

PROFESSOR R.J. COOMBE

FALL 1989

VOLUME I

FACULTY OF LAW

UNIVERSITY OF TORONTO

Prepared with the assistance of
Shauna Van Praagh

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/familylawsupplem01coom

TABLE OF CONTENTS (1989)

PAGE

I. INTRODUCTION: THE FAMILY AND FAMILY LAW

1. The Family as Basic Social Unit 1

2. What is the Family? Definitions and Demographics

Eichler, Families in Canada Today 3

Rubin, Worlds of Pain 48

"Families in Transition", Transition 53

"Strong Family Ties", Maclean's 55

3. The Social World and Subjective Life

Zaretsky, Capitalism, the Family and Personal Life 56

Rubin, Worlds of Pain 74

4. The Family and Family Law: The Justification for Legal Intervention

Glendon, "The New Marriage and the New Property" 98

Eekelaar, Family Law and Social Policy 106

Minow, "Beyond State Intervention in the Family" 114

5. The Institutional Framework: The Family Court

Zuber Commission, "Report of the Ontario Courts Inquiry 120

II. MARRIAGE AND NULLITY

1. The Legal Significance of Marriage

O'Donovan, "Legal Marriage - Who Needs It?" 132

2. Validity of Marriage

(i) Requirement of Opposite Sexes

Adams and Sullivan v. Howerton 137

Anderson v. Luoma 141

Re Andrews and Minister of Health for Ont. 144

III. DIVORCE

1. The Social Context of Divorce

Hahlo, "The Changing Face of Marriage and Divorce" 145

"Divorce Statistics Not All That Bad" Globe and Mail 150

Divorces Up a Whopping 26 per cent", Toronto Star 151

"New Law is Cited as Rate of Divorce Rises by 26 per cent", Globe and Mail 151

2. Substantive Reform of Divorce Law: Grounds for Divorce

Amiel, "The Fault in No-Fault Divorce" 152

Weitzman, The Divorce Revolution 153

3. Bars to Divorce: Prejudicial Effects on Children's Support

R.D.F. v. S.L.F. 158

Note - MacKinnon v. MacKinnon, Bergman v. Bergman Schultz v. schultz, Simpson v. Simpson 161

IV. THE FAMILY AS AN ECONOMIC UNIT

1. Women's Participation in the Labour Force

Boulet and Lavalée, The Changing Economic Status of Women 164

"Women's Rush to Work Force Called Striking", Globe and Mail 167

"High Growth Reported for Women in Labour Force", 168

2. Women's Earnings

"Earnings Gap 341 Years Wide", Winnipeg Free Press 169

"Wage Gap for Women Unchanged", Globe and Mail 170

"Marriage Tied to Wage Gap Between Sexes", Toronto Star 170

3. Women's Double Burden - Housework and Career

"Women Sacrifice Career Plans for Family", Globe and Mail 171

"Study Finds Chores Not Shared", Globe and Mail 172

Rubin, Worlds of Pain 53

4. Family Breakdown

Maclean, "Households After Divorce" 187

"The Changing Face of Poverty", Toronto Star 196

"Poverty Rate of Ontario's Children", Globe and Mail 197

"One Out of Seven Children Needs Food Handout", Globe and Mail 197

V. PROPERTY

1. Trust Doctrine

Herman v. Smith 198

Connors v. Connors 203

Note: Everson v. Rich, Crisp v. Banton 205

2. Matrimonial Property Legislation

Knetsch, "Some Economic Implications of Matrimonial Property Rules" 207

Prager, "Shifting Perspectives on Marital Property Law" 216

Eekelaar, "Adjustment on Divorce" 221

3. Ontario's New Property Legislation: The Family Law Act, 1986

(i) What is Property?

(a) Continued Role of Trusts

Rawluk v. Rawluk 228

Note - Cox v. Cox, McDonald v. McDonald, Hapichuk v. Hapichuk, Wilson v. Wilson 231

(b) Wo[illegible]ers' Compensation Payments

N[illegible] - Kelly v. Kelly, Buske v. Buske 232

(c) Educational Degrees 233

O'Brien v. O'Brien 234

Caratun v. Caratun 240

Linton v. Linton 253

Note - Berghofer v. Berghofer, Drummond v. Smith, Cole v. Cole 268

(d) Pensions

Marsham v. Marsham 270

Note - Humphreys v. Humphreys, Lovegrove v. Lovegrove, Fitzpatrick v. Fitzpatrick, Abate v. Abate 286

(ii) Deductions and Exclusions

McPherson v. McPherson 287

Jackson v. Jackson 292

Kukolj v. Kukolj 292

Miller v. Miller 294

Wolfson and Corbin, "Problems of Title and Constructive Trusts" 295

(iii) Departures from 50-50 Sharing

Scott v. Scott 296

LeBlanc v. LeBlanc 299

Note - Jordan v. Jordan, Davies v. Davies, Berdette v. Berdette 304

VII. SPOUSAL SUPPORT

1. Principles of Spousal Support

(a) The Appropriate Principles of Spousal Support

Deech, "Financial Relief" 305

Land, "Changing Women's Claims to Maintenance" 307

Abella, "Economic Adjustment on Marriage Breakdown: Support" 310

Weitzman, "The Economics of Divorce" 315

2. Dependency Caused by the Relationship (Causal Connection)

Bebakhee v. Bebakhee 316

Note: Winterle v. Winterle 321

Fisher v. Fisher 321

Schroeder v. Schroeder 322

Williams v. Williams 322

Duff v. Duff 322

Willms v. Willms 324

Francis v. Francis, Wiseman v. Wiseman 324

Smith v. Smith 325

Marquis v. Marquis 325

Madill v. Madill 325

Trainor v. Trainor 332

Rehr v. Rehr 332

Bank v. Bank 332

Grader v. Grader 332

3. Self-Sufficiency and Compensatory Support

Richards v. Richards 334

Jull v. Jull 335

Karlovcec v. Karlovcec 338

Pennington v. Pennington 341

Rednall v. Rednall 345

Linton v. Linton 351

VII CHILD SUPPORT

1. Establishing a Parent-Child Relationship

Primeau v. Primeau 352

2. Principles of Child Support

Note - Kurt v. Kurt, Smith v. Smith 359

Friesen v. Friesen 360

Twaddle v. Twaddle 364

Note Brownell v. Brownell, Casement v. Casement, Turecki v. Turecki 367

3. Balancing Support Obligations Between First and Second Families

Eekelaar, "Maintenance and Children" 368

Maclean, "Households after Divorce" 373

Sawchyn v. Sawchyn 374

Storer v. Storer 375

VIII DOMESTIC CONTRACTS

Balfour v. Balfour 378

Mnookin, "Divorce Bargaining: The Limits on Private Ordering" 379

Note - Fyffe v. Fyffe, Marshall v. Marshall, Desmarais Desmarais 383

Leman v. Leman, Ritchie v. Ritchie 385

IX CHILD CUSTODY AND ACCESS IN THE CONTEXT OF DIVORCE

1. Overview of the Issues

Folberg, "Custody Overview" 387

2. The Social Science Perspective on Custody

Maidment, "The Matrimonial Causes Act, s.42 and the children of divorce: theoretical and empirical considerations" 393

Goldstein, Freud, Solnit, Beyond the Best Interests of the Child 407

3. Judicial Resolution of Custody Disputes: The Principles

(i) Statis Quo (De FactoSituation

Novic v. Novic 417

Sherrett v. Sherrett 419

"Mother loses custody after move into shelter", Globe and Mail 421

(ii) General Principles: Tender Years

Talsky v. Talsky 422

R. v. R. 427

Bendle v. Bendle 439

Yablonski v. Yablonski 439

Klachefsky v. Brown 449

Harden v. Harden 455

(iii) Conduct

Cooney v. Cooney 458

Fishback v. Fishback 462

Bell v. Kirk 468

Note - Young v. Young 468

4. Reforming Custody Determination

(i) Joint Custody

Folberg, "Joint Custody" 471

"Parents March Over Custody", Globe and Mail 475

Parsons v. Parsons 476

"Joint Custody Viable Option", Globe and Mail 479

Kamimura v. Squibb 480

Bill 95, An Act to Amend the Children's Law Reform Act 485

"MPP's plan on custody is assailed", Globe and Mail 489

5. Access

(i) Restrictions on Mobility

"Mother forbidden to move children too far from father", Globe and Mail 490

Blois v. Blois 491

Bennett v. Drouillard 495

(ii) Interference With and Denial of Access

Rutherford v. Rutherford 502

Bourdon v. Casselman 506

Frame v. Smith 512

Bill 124, An Act to Amend the Children's Law Reform Act 518

"Parents, lawyers split on proposed bill", Globe and Mail 521

(iii) Grandparents' Access

Foster and Freed, "The Child's Right to Visit Grandparents" 523

Tramble v. Hill 528

"Grandmother Wants Rights", The Guardian 532

X CHILD CUSTODY AND ACCESS DISPUTES OUTSIDE THE DIVORCE CONTEXT

1. Custody

Racine v. Woods 533

Vignaux-Fines v. Chardon 542

2. Access

Lapp v. Dupuis 546

X ADOPTION

1. Access After Adoption

Silk v. Silk 545